

CSD 1160 [05/15/03]

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UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF CALIFORNIA  
 325 West "F" Street, San Diego, California 92101-6991

In Re

ROQUE ALBERTO AVILA

Debtor.

BANKRUPTCY NO. 09-06996 PB13

AMERICREDIT FINANCIAL SERVICES INC. AS ASSIGNEE  
 FROM LONG BEACH ACCEPTANCE CORP.

Moving Party

RS NO. CJL-1

ROQUE ALBERTO AVILA; DAVID L. SKELTON

Respondent (s)

Chapter 13

## MOTION FOR RELIEF FROM AUTOMATIC STAY

☐ REAL PROPERTY ☒ PERSONAL PROPERTY

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter ☐ 7 ☐ 11 ☐ 12 ☒ 13 was filed on 05/21/09.
2. Procedural Status:
  - a. ☒ Name of Trustee Appointed (if any): **DAVID L. SKELTON**
  - b. ☐ Name of Attorney of Record for Trustee (if any):
  - c. ☐ (Optional) Prior Filing Information:  
 Debtor has previously filed a Bankruptcy Petition on: \_\_\_\_\_.  
 If applicable, the prior case was dismissed on: \_\_\_\_\_.
  - d. ☒ (If Chapter 13 case): Chapter 13 Plan was confirmed on N/A or a confirmation hearing is set for 11/04/09.

Movant alleges the following in support of its Motion:

1. ☐ The following real property is the subject of this Motion:
  - a. Street address of the property including county and state:
  - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):
  - c. Legal description of property is attached as Exhibit A.

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- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. \*Fair market value of property as set forth in the Debtor's schedules: \$\_\_\_\_\_.
- f. \*Nature of Debtor's interest in the property:

2. ☒ The following personal property is the subject of this Motion (*describe property*):  
**2007 TOYOTA YARIS; VIN #JTDJT923875132086**

- a. Fair market value of property as set forth in the Debtor's schedules: \$\_\_\_\_\_.
- b. Nature of Debtor's interest in the property: **BUYER**

3. \*Fair market value of property according to Movant: \$ **10,500.00**\_\_\_\_\_.

4. \*Nature of Movant's interest in the property: **LIENHOLDER**

5. \*Status of Movant's loan:

- a. Balance owing on date of Order for Relief: \$ **14,051.83**\_\_\_\_\_
- b. Amount of monthly payment: \$ **385.97**\_\_\_\_\_
- c. Date of last payment: **07/24/09**\_\_\_\_\_
- d. If real property,
- i. Date of default: \_\_\_\_\_
- ii. Notice of Default recorded on: \_\_\_\_\_
- iii. Notice of Sale published on: \_\_\_\_\_
- iv. Foreclosure sale currently scheduled for: \_\_\_\_\_
- e. If personal property,
- i. Pre-petition default: \$ **N/A**\_\_\_\_\_ No. of months: **N/A**\_\_\_\_\_
- ii. Post-petition default: \$ **767.91**\_\_\_\_\_ No. of months: **2**\_\_\_\_\_

6. (If Chapter 13 Case, state the following:)

- a. Date of post-petition default: **07/18/09**\_\_\_\_\_
- b. Amount of post-petition default: \$ **767.91**\_\_\_\_\_

7. Encumbrances:

- a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st:					
2nd:					
3rd:					
4th:					
Totals for all Liens:	\$ 0.00	\$	0.00	\$	0.00

- b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant:
- ☐ See attached page, if necessary.

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8. Relief from the automatic stay should be granted because:
- a. ☒ Movant's interest in the property described above is not adequately protected.
  - b. ☐ Debtor has no equity in the ☐ real property ☒ personal property described above and such property is not necessary to an effective reorganization.
  - c. ☐ The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or \_\_\_\_\_ days as ordered by this court) have passed since entry of the order for relief in this case, and
    - i. the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
    - ii. the Debtor/Trustee has
      - (1) ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
      - (2) ☐ commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
  - d. ☐ \*Other cause exists as follows (*specify*): ☐ See attached page.

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

Movant attaches the following:

1. ☒ Other relevant evidence:  
**SEE DECLARATION ATTACHED HERETO**
2. ☐ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief as requested.
- ☒ Other: **That the Order granting relief be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter.**

**That the 10-day stay prescribed by Bankruptcy Rule 4001(a)(3) be waived.**

Dated: **September 18, 2009**

  
/s/ Christopher J. Langley

[Attorney for] Movant

**CHRISTOPHER J. LANGLEY**